Charles Nichols
PO Box 1302
Redondo Beach, CA 90278
Tel. No. (424) 634-7381
e-mail: CharlesNichols@Pykrete.info
In Pro Per

March 2, 2017
by cm/ecf

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *Charles Nichols v. Edmund Brown, Jr., et al* 9th Cir. No.: 14-55873;
Rule 28(j) letter

Dear Ms. Dwyer:

Plaintiff-Appellant Nichols submits *Willis et al v. City of Fresno et al*, No.: 14-16560 (9th Cir. March 1, 2017) as supplemental authority (FRAP 28(j) and 32.1).

Appellees Governor Brown and Attorney General Becerra argue that there is an important governmental objective in prohibiting the mere carriage of modern, unloaded firearms (carried openly) Appellees' Answering Brief at 37 citing the legislative record to the bans on openly carrying modern, unloaded firearms: "A deadly confrontation may ensue between the person openly carrying a firearm and the responding peace officer…"

Nichols argues in his appellant's opening brief (AOB) that the Fourth Amendment prohibits police officers from using deadly force merely because someone is openly carrying a firearm. "No court has ever held that anything can be banned or "regulated" because of the speculative, hypothetical and unlawful action of police officers. To do so would make this a police state." *Id* at 13.

"The constitutional right to be free from the use of deadly force absent an immediate threat of harm to officers or others was clearly established at the time Officer Catton acted. See *Tennesee v. Garner*, 471 U.S. 1, 11 (1985); *Wilkinson v. Torres*, 610 F.3d 546, 550 (9th Cir. 2010). All reasonable officers would have known that using deadly force on an individual who poses no immediate threat to the officer or others violates the Fourth Amendment." *Willis* Slip Op., at 3.

The legislative record does not claim that people who merely carry firearms openly present a threat to anyone. It is the police, according to the California legislature, which creates the danger to the public.

Nichols submits that the hypothetical, unlawful acts of police officers as a pretext for banning what the California Supreme Court has held is the innocent act of possession of a firearm AOB at 54 and which has held that the use of an unloaded firearm does not constitute assault unless it is used as a bludgeon Id at 53 fails even the rational basis test.

The body of this letter contains 330 words.

Sincerely,

s/ Charles Nichols

Charles Nichols
Plaintiff-Appellant in Pro Per

cc: counsel of record (by cm/ecf)